

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

BRENDA L. McCULLOCH

Claimant

VS.

DILLON COMPANIES, INC.

Respondent

Self-Insured

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Docket No. 217,405

ORDER

Respondent requested review of the preliminary hearing Order dated January 10, 1997, entered by Administrative Law Judge Nelsonna Potts Barnes.

ISSUES

The Administrative Law Judge granted claimant's request for temporary total disability and medical benefits. Respondent requested review of the issue whether claimant sustained personal injury by accident arising out of and in the course of her employment with respondent.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for preliminary hearing purposes the Appeals Board finds as follows:

The preliminary hearing Order should be affirmed.

The Appeals Board agrees with the Administrative Law Judge that claimant sustained personal injury by accident arising out of and in the course of her employment with the respondent. The Appeals Board finds the accidental injury occurred during the period commencing approximately one week before September 3, 1996, and continuing

each work day thereafter through claimant's last day at work on October 3, 1996. That finding is based both on claimant's testimony and the medical records from the Dopps Chiropractic Clinic dated September 3, 1996, which indicate claimant first noticed back pain approximately one week before while lifting a bread rack at work. Claimant also testified that her low-back complaints worsened while she continued to work until she was ultimately taken off work by her private physician as of October 4, 1996. For purposes of preliminary hearing, the Appeals Board finds that evidence persuasive.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order dated January 10, 1997, entered by Administrative Law Judge Nelsonna Potts Barnes, should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of March 1997.

BOARD MEMBER

c: Gary E. Patterson, Wichita, KS
Scott J. Mann, Hutchinson, KS
Nelsonna Potts Barnes, Administrative Law Judge
Philip S. Harness, Director